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28 MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS EVIDENCE - 1

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE TERRITORY OF GUAM**

3 **UNITED STATES OF AMERICA,**

4 **Plaintiff,**

5 **vs.**

6
7 **JOHN D. WALKER, aka JON WALKER,**
8 **MARVIN REED, KENNETH R. CROWE,**
9 **and PHILLIP T. KAPP**

10 **Defendants.**

CRIMINAL CASE NO. 18-00010

**MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS EVIDENCE**

11 John D. Walker and Phillip T. Kapp submit this Memorandum in Support of their Motion
12 to Suppress Evidence.

13 **SUMMARY**

14 The Motion to Suppress relates to evidence obtained directly and indirectly through three
15 illegal search warrants issued and served in Guam, Saipan and the Middle District of Georgia.

16 Five points are paramount importance to the Motion to Suppress.

17 FIRST, for this Court to have jurisdiction, the alleged crimes had to have been committed
18 in the territory of the United States. The purported illegal acts involve helicopters owned by
19 Vanuatu corporations leased to spot fish from Pacific Ocean based fishing boats.

20 SECOND, federal criminal jurisdiction is limited to violations of Federal laws.
21 18 U.S.C. § 3231. The purported violations of Federal laws depend upon the jurisdiction of the
22 Federal Aviation Administration and the National Transportation Safety Board. Every helicopter
23 mentioned by the United States in the search warrant affidavits (a) is owned by a Vanuatu
24 corporation, (b) was invalidly registered with the FAA, and (c) operated in the international
25
26
27

28 MEMORANDUM IN SUPPORT OF
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1 waters of the Pacific Ocean on fishing ships which lease and control the operation and location
2 of the helicopters, including, but not limited to when and where they come to port. The FAA has
3 no jurisdiction over the helicopters.

4
5 THIRD, the search warrants were based on material misrepresentations and omissions
6 made to three United States Magistrates.

7
8 FOURTH, the search warrants resulted from the activities of Douglas Dymock of the
9 FAA's Special Emphasis Investigations Team ("SEIT"). Dymock announced that Walker and
10 Hansen Helicopters were dirty and that he was going to shut them down and that he was going to
11 keep digging until he found something he thought was wrong. Dymock found nothing, but
12 proceeded with his efforts against Walker and Hansen Helicopters.

13
14 FIFTH, the search warrants failed to particularly describe the things to be seized, thereby
15 becoming general search warrants and allowing the seizure of virtually anything the executing
16 officers wanted. The Fourth Amendment instructs that in the execution of a search warrant
17 nothing is to be left to the discretion of the officer executing the warrant.

18 ***Standard of Review***

19 The right of the people to be secure in their person, houses, papers,
20 and effects, against unreasonable searches and seizures, shall not
21 be violated, and no Warrants shall issue, but upon probable cause,
22 supported by Oath or affirmation, and particularly describing the
23 place to be search and the persons or things to be seized.

24
25 Movants move pursuant to Fed. R. Crim. P. 41(h) to suppress evidence obtained from or
26 as a result of the illegal search warrants based on affidavits of Peter Prozik of the Federal Bureau
27 of Investigation and Michael Bishop of the Department of Transportation Office of Inspector
28 General ("OIG"). There are two types of Fed. R. Crim. P. 41 basis for suppression of evidence,

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1 both of which are present in this case: (a) fundamental, which involves a constitutional violation
2 of rights, in this case, illegal searches and seizures, and (b) "'Non-fundamental' noncompliance
3 with Rule 41 requires suppression only if (1) there was "prejudice" in the sense that the search
4 might not have occurred or would not have been so abrasive if the Rule had been followed, or (2)
5 there is evidence of intentional and deliberate disregard of the Rule." *United States v. Johnson*,
6 641 F.2d 652, 656 (9th Cir. 1980). The Court has before it fundamental and non-fundamental
7 violations of Fed. R. Crim. P. 41.
8

9 ***Jurisdiction***

10 The most "fundamental" issue with which a court can be presented is jurisdiction.
11 Personal jurisdiction has not been raised in this case. A lack of subject matter jurisdiction
12 violates Article III of the United States Constitution. Two aspects of subject matter jurisdiction
13 are central to this case: (1) Article III of the Constitution extends the federal judicial power to all
14 cases "arising under" the laws, Constitution, and treaties of the United States, and (2) it is
15 axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to
16 sustain a conviction. *United States v. White*, 611 F.2d 531, 536 (5th Cir. 1980), *Gov't of Canal*
17 *Zone v. Burjan*, 596 F.2d 690, 694 (5th Cir. 1979), *United States v. Benson*, 495 F.2d 475 (5th
18 Cir.) *cert. denied* 419 U.S. 1035 (1974). Territorial jurisdiction depends on some part of the
19 alleged crime having occurred in United States territory. *See United States v. Luton*, 486 F.2d
20 1021, 1022 (5th Cir. 1973), *cert. denied*, 417 U.S. 920 (1974).
21
22
23

24 The defendants' alleged activities did not arise under the laws, Constitution, and treaties
25 of the United States or occur in the territory of the United States. The search warrants about
26
27

1 which the Movants complain were issued without jurisdiction. *Johnson v. Zerbst*, 304 U.S. 458
2 (1938), *Bauman v. United States*, 156 F.2d 534 (5th Cir. 1946).

3 All evidence obtained with the illegal search warrants must be suppressed and returned to
4 the persons from whom the property was illegally seized.

5
6 ***Search Warrants***

7 The Fourth Amendment states “no Warrants shall issue, but upon probable cause,
8 supported by Oath or affirmation, and particularly describing the place to be searched, and the
9 persons or things to be seized.” Fed. R. Crim. P. 41(d)(1). The Supreme Court in *Illinois v.*
10 *Gates*, 462 U.S. 213, 238 (1983) held that:

11
12 The task of the issuing magistrate is simply to make a practical,
13 common-sense decision whether, given all the circumstances set
14 forth in the affidavit before him, including the "veracity" and
15 "basis of knowledge" of persons supplying hearsay information,
there is a fair probability that contraband or evidence of a crime
will be found in a particular place.

16 The Prozik and Bishop affidavits were directed against Walker. “All the operations are based
17 within the Territories of the United States under several company names, but owned and
18 operated by . . . Walker, including Hansen Helicopters.” **Exhibits A-C of the Motion to**
19 **Suppress (Doc. #257).**

20
21 The Fourth Amendment to the United States Constitution provides:

22 [t]he right of the people to be secure in their persons, houses,
23 papers, and effects, against unreasonable searches and seizures,
24 shall not be violated, and no Warrants shall issue, but upon
25 probable cause, supported by Oath or affirmation, and particularly
describing the place to be searched, and the persons or things to be
seized.

26 The threshold constitutional requirement for issuance of a warrant is probable cause.
27

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1 Probable cause refers to “the facts and circumstances within their [the officers’]
2 knowledge and of which they had reasonably trustworthy information [are] sufficient in
3 themselves to warrant a man of reasonable caution in the belief that an offense has been or is
4 being committed. *Carroll v. United States*, 267 U. S. 132, 162.” *Brinegar v. United States*, 338
5 US 160, 175 (1949). For the reasons stated in the Motion to Suppress, Prozik and Bishop knew
6 or should have known that they were submitting false information to the courts. Alternatively,
7 Dymock, an agent of the United States, convincingly lied to Prozik and Bishop so as to convince
8 them to submit false affidavits that they did not know were false. If the truth had been presented
9 to the Magistrates, search warrants would not have been issued. The false affidavits prevented
10 the Magistrates from making practical, common sense decisions upon their review of the
11 affidavits as required by *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The affidavits fly into the
12 face of the requirements of *Illinois v. Gates*.

13
14
15 It is impossible to construct a reasonable situation in which a valid search warrant could
16 be (a) issued to investigate matters not subject to the United States jurisdiction and/or (b)
17 obtained based on affidavits rife with material misrepresentations and omissions of fact and law.
18 The United States had no basis for requesting the search warrants or presenting the three legally
19 and factually defective affidavits to justify the issuance of search warrants.

20
21 The Supreme Court stated in *Carpenter v. United States*, 585 U.S. ---, 138 S. Ct. 2206,
22 2213 (2018) “The ‘basic purpose of this Amendment,’ our cases have recognized, ‘is to
23 safeguard the privacy and security of individuals against arbitrary invasions by governmental
24 officials.’” The Court in *Franks v. Delaware*, 438 U.S. 154, 164-165 (1978) stated that:

25
26 The bulwark of Fourth Amendment protection, of course, is the
27 Warrant Clause, requiring that, absent certain exceptions, police

28
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1 obtain a warrant from a neutral and disinterested magistrate before
2 embarking upon a search. In deciding today that, in certain
3 circumstances, a challenge to a warrant's veracity must be
4 permitted, we derive our ground from language of the Warrant
5 Clause itself, which surely takes the affiant's good faith as its
6 premise: "[N]o Warrants shall issue, but upon probable cause,
7 supported by Oath or affirmation" Judge Frankel put the
8 matter simply: "[W]hen the Fourth Amendment demands a factual
9 showing sufficient to comprise 'probable cause,' the obvious
10 assumption is that there will be a **truthful** showing" (emphasis in
11 original). . . . But surely it is to be "truthful" in the sense that the
12 information put forth is believed or appropriately accepted by the
13 affiant as true.

14 Citations omitted. A warrant can be determined to be supported by probable cause if there is "a
15 fair probability that contraband or evidence of a crime will be found in a particular place."

16 *Illinois v. Gates*, 462 U.S. at 238. "A warrant affidavit must set forth particular facts and
17 circumstances underlying the existence of probable cause," so that a judicial officer can 'make an
18 independent evaluation of the matter.'" *Franks*, 438 U.S. at 165.

19 In *Franks*, the Supreme Court established a defendant's right to challenge the truthfulness
20 of statements made by law enforcement agents in an affidavit used to secure a search warrant.

21 *Id.* If a defendant is successful in proving—by a preponderance of the evidence—that a warrant
22 was issued based on "a false statement that was both material to the finding of probable cause
23 and made either knowingly and intentionally or with reckless disregard for the truth," then
24 evidence obtained pursuant to the warrant must be suppressed. *Id.* at 155-56.

25 The Ninth Circuit in *Frimmel Management, LLC v. United States*, 897 F.3d 1045, 1051-
26 1052 (9th Cir. 2018) (citations omitted) set forth the standards for review of the affidavits,
27 standards which mandate the suppression of the described evidence:

28 "It is established law that a warrant affidavit must set forth
particular facts and circumstances underlying the existence of

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1 probable cause, so as to allow the magistrate to make an
2 independent evaluation of the matter. A search warrant, to be
3 valid, must be supported by an affidavit establishing probable
cause."

4 To prevail on a claim that the police procured a warrant through
5 deception, the party challenging the warrant must show that the
6 affiant deliberately or recklessly made false statements or
7 omissions that were material to the finding of probable cause. Our
8 evaluation of materiality requires that we consider the effect of any
9 false statements or omissions. "If an officer submitted false
10 statements, the court purges those statements and determines
11 whether what is left justifies issuance of the warrant." "If the
12 officer omitted facts required to prevent technically true statements
13 in the affidavit from being misleading, the court determines
14 whether the affidavit, once corrected and supplemented,
15 establishes probable cause."

16 If the corrected warrant is lacking in probable cause, then "the
17 search warrant must be voided and the fruits of the search excluded
18 to the same extent as if probable cause was lacking on the face of
19 the affidavit." . . . "[B]y reporting less than the total story, an
20 affiant can manipulate the inferences a magistrate will draw ... [T]o
21 allow a magistrate to be misled in such a manner could denude the
22 probable cause requirement of all real meaning." Citations
23 omitted.

24 The exclusionary rule prohibits the introduction into evidence of tangible materials seized
25 during an illegal search. *See Murray v. United States*, 487 U.S. 533, 536 (1988). A trial judge
26 must exclude all evidence derived from exploitation of the original constitutional violation up to
27 the point at which the connection with the illegality becomes "so attenuated as to dissipate the
28 taint." *Id.*; *Nardone v. United States*, 308 U.S. 338, 341 (1939). The defendants satisfy their
burdens for a *Franks* hearing and the suppression of evidence.

1 ***Criminal Jurisdiction***

2 The affidavits demonstrate this Court's lack of subject matter jurisdiction because no
3 laws of the United States have been violated. The applications for Search Warrant allege the
4 following as a basis for seizure; (1) evidence of a crime, (2) contraband, fruits of a crime, or
5 other items illegally possessed; and (3) specifically in the Georgia and Guam warrants property
6 designed for use, intended for use, or used in committing a crime, "involving the laws of the
7 United States." Criminal subject matter jurisdiction depends upon (a) the locus of the alleged
8 crimes and (b) cases arising under the laws, Constitution and treaties of the United States. The
9 claims made in the three Affidavits for Search Warrant do not involve United States territory and
10 do not involve activity violating the defendants' obligations arising under the laws, Constitution
11 and treaties of the United States.
12

13
14 The Supreme Court held in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S.
15 375, 377 (1994):
16

17 Federal courts are courts of limited jurisdiction. They possess only
18 that power authorized by Constitution and statute, which is not to
19 be expanded by judicial decree. It is to be presumed that a cause
20 lies outside this limited jurisdiction, and the burden of establishing
21 the contrary rests upon the party asserting jurisdiction.

22 Citations omitted. Courts are presumed to lack jurisdiction unless the contrary appears
23 affirmatively from the record. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n. 3,
24 (2006). Federal courts have a duty to examine jurisdiction *sua sponte* before proceeding to the
25 merits of a case, *see Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583, (1999), "even in the
26 absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006).
27

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1 ***Territorial Jurisdiction***

2 Criminal jurisdiction requires a nexus with the United States “in a territorial sense,
3 includes all places and waters, continental or insular, subject to the jurisdiction of the United
4 States, except the Canal Zone.” 18 U.S.C. § 5. “It is axiomatic that the prosecution must always
5 prove territorial jurisdiction over a crime in order to sustain a conviction therefor.” *United States*
6 *v. Benson*, 495 F.2d 475, 481 (5th Cir.), *cert. denied*, 419 U.S. 1035 (1974), quoted in *Gov’t of*
7 *Canal Zone v. Burjan*, 596 F.2d 690, 694 (5th Cir. 1979). Any offenses occurred in Vanuatu and
8 the international waters of the Pacific Ocean, outside the territory of the United States.
9

10 The applicable jurisdictional constraints in this case are found in the Convention on
11 International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180. The Convention on International Civil
12 Aviation defines the civil aviation jurisdiction of a country in Article 1 “The contracting States
13 recognize that every State has complete and exclusive sovereignty over the airspace above its
14 territory.” Article 2 of the Convention defines the territory of a state “For the purposes of this
15 Convention the territory of a State shall be deemed to be the land areas and territorial waters
16 adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.”
17

18 The FAA and Vanuatu corporations mistakenly and invalidly attempted to register the
19 helicopters. Prozik and Bishop in their affidavits, **Exhibits A and B of the Motion to Suppress**
20 **(Doc. #257)**, correctly state that the attempts to register the helicopters with the FAA were
21 “invalid.” Vanuatu corporations should not have requested to have the helicopters registered
22 with the FAA and the FAA should have not accepted the attempted registration. 12 C.F.R. §
23 47.9. The invalid registrations of the helicopters cannot confer jurisdiction over the helicopter or
24 this criminal case.
25
26
27

1 An aircraft “may be registered only by and in the legal name of its owner.” 14 C.F.R. §
2 47.5(b). 14 C.F.R. § 47.3 permits registration of aircraft by the owner of the aircraft not
3 registered under the laws of a foreign country. With regard to aircraft owned by a corporation
4 not owned by a citizen of the United States, the corporation must be organized and doing
5 business under the laws of the United States or a State and the aircraft is based and primarily
6 used in the United States. 14 C.F.R. § 47.3(a)(3), 14 C.F.R. § 47.9 (obligation on corporations
7 which are not United States citizens). The FAA registrations by the Vanuatu corporations do not
8 satisfy these criteria and the registrations are invalid. 14 C.F.R. § 47.43(a).

9
10
11 When a corporation not a United States citizen requests to register an aircraft with the
12 FAA, it must submit with the registration form (a) A certified copy of its certificate of
13 incorporation; (b) A certification that it is lawfully qualified to do business in one or more States;
14 and (c) A certification that the aircraft will be based and primarily used in the United States. 14
15 C.F.R. § 47.9. This did not occur with the Vanuatu corporations and their owned aircraft.

16
17 The Vanuatu corporations’ FAA registrations were “invalid.” *Ballentine’s Law*
18 *Dictionary*, 3d Ed., defines invalid as “**Illegal, having no force or effect or efficacy; void;**
19 **null.**” *Merriam-Webster* defines “invalid” as “being **without foundation or force in fact,**
20 **truth, or law.**” Various Vanuatu corporations registered their helicopters, albeit invalidly, with
21 the FAA. The FAA invalidly issued the registrations. The prescribed remedy is to return the
22 registration papers to the FAA. 14 C.F.R. § 47.43(b) “If the registration of an aircraft is invalid
23 under paragraph (a) of this section, the holder of the invalid Certificate of Aircraft Registration,
24 AC Form 8050-3, must return it as soon as possible to the Registry.”
25
26
27

1 For this Court to have jurisdiction because of the invalid registrations would mean that
2 the FAA and the Vanuatu corporations created jurisdiction where none existed by making
3 mistakes. Parties to a lawsuit cannot consent to subject matter jurisdiction intentionally or
4 accidentally. “[T]he consent of the parties is irrelevant, principles of estoppel do not apply, and
5 a party does not waive the requirement by failing to challenge jurisdiction early in the
6 proceedings.” *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites de Guinee*, 456 U.S.
7 694, 702 (1982).

9 ***Arising Under the Laws, Constitution and Treaties***

10 Article III of the Constitution extends the federal judicial power to all cases "arising
11 under" the laws, Constitution, and treaties of the United States. In this case, central to the
12 charges against the defendants is that they violated FAA regulations. A review of the FAA
13 regulations demonstrates the false and misleading nature of the three affidavits in addition to the
14 factual falsities upon which the United States relied in seeking the issuance of search warrants.
15

16 Federal statutory law recognizes that the law of the United States does not exist over all
17 persons and commerce in the world. A violation of 18 U.S.C. § 38(a), requires an effect on
18 “interstate or foreign commerce.” 18 U.S.C. § 10 states that:

19
20 The term "interstate commerce", as used in this title, includes
21 commerce between one State, Territory, Possession, or the District
22 of Columbia and another State, Territory, Possession, or the
23 District of Columbia.

24 The term "foreign commerce", as used in this title, includes
25 commerce with a foreign country.

26 This case does not involve either “interstate commerce” or “foreign commerce” as required by
27 18 U.S.C. § 38(a).

1 The parties could not conspire to commit an offence against the United States or to
2 defraud the United States as provided in 18 U.S.C. § 371 (“offense against the United States, or
3 to defraud the United States”) without subject matter jurisdiction. Similarly, without subject
4 jurisdiction over the areas of purportedly illegal conduct, the defendants could not have made
5 false statements “within the jurisdiction of the executive, legislative, or judicial branch of the
6 Government of the United States.”

8 Mail fraud, 18 U.S.C. § 1341, has three elements: The elements of mail fraud and wire
9 fraud are essentially identical: “the government must show (1) a scheme to defraud, (2) the use
10 of either the mail or wire, radio, or television to further the scheme, and (3) the specific intent to
11 defraud.” *United States v. Brugnara*, 856 F.3d 1198, 1207 (9th Cir. 2017). The search warrant
12 affidavits omit any reference to the use of the United States mail. Moreover, ignoring the owners
13 of the helicopters, which all had Vanuatu addresses, and focusing on Hansen Helicopters and
14 Walker, any mail from or to Walker and Hansen Helicopters, if it existed, would not relate to the
15 purported violations of the law as the actors, based on the FAA records, were the Vanuatu
16 corporations, which were not even named in the search warrant affidavits.

19 The same analysis applies to wire fraud, 18 U.S.C. § 1343. “Since both section 1341 and
20 1343 outlaw use of the mails or wire communications “for the purpose of executing” the scheme
21 to defraud, the sections are in *pari materia* and are to be given similar construction.” *United*
22 *States v. Cusino*, 694 F.2d 185, 187 n.1 (9th Cir. 1982). There is nothing in the affidavits that
23 show Hansen or Walker used United States wires to commit a crime. Congress’s legislative
24 concern was “to prevent the use of [United States wires] in furtherance of fraudulent enterprises.”
25 *United States v. Kim*, 246 F.3d 186, 191 (2d Cir. 2001). Hansen Helicopters and Walker were
26
27

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1 not the owners of the helicopters, the helicopters were owned by companies formed in a foreign
2 country, Vanuatu, and operated outside the territorial limits of the United States, the Pacific
3 Ocean.

4
5 The FAA through the DOT has jurisdiction over fast, safe, efficient, and convenient
6 transportation at the lowest cost consistent with those and other national objectives. 49 U.S.C. §
7 101. The FAA's jurisdiction over Civil Aviation is not unlimited. Convention on International
8 Civil Aviation, 49 U.S.C. § 106(g), sets forth the duties and powers of the FAA administrator.
9 Part of those duties and powers includes those found in Section 40101. 49 U.S.C. § 40101(d)
10 provides the FAA considers, among other things, air commerce. Central to understanding the
11 jurisdiction of the FAA over aircraft are the terms "air commerce," "navigable airspace" and
12 civil aircraft. These terms are defined in 49 U.S.C. § 40102(a):
13

14 (3) "air commerce" means foreign air commerce, interstate air commerce,
15 the transportation of mail by aircraft, the operation of aircraft within the
16 limits of a Federal airway, or the operation of aircraft that directly affects,
or may endanger safety in, foreign or interstate air commerce.

17 (17) "civil aircraft of the United States" means an aircraft registered under
18 chapter 441 of this title.¹

19 (22) "foreign air commerce" means the transportation of passengers or
20 property by aircraft for compensation, the transportation of mail by
21 aircraft, or the operation of aircraft in furthering a business or vocation,
22 between a place in the United States and a place outside the United States
when any part of the transportation or operation is by aircraft.

23 (24) "interstate air commerce" means the transportation of passengers or
24 property by aircraft for compensation, the transportation of mail by
25 aircraft, or the operation of aircraft in furthering a business or vocation—

26
27 ¹ Public aircraft are owned or operated by the government.

1 (A) between a place in—

2 (i) a State, territory, or possession of the United States and
3 a place in the District of Columbia or another State,
4 territory, or possession of the United States; or

* * *

5 (iv) a territory or possession of the United States and
6 another place in the same territory or possession.

7 Under 49 U.S.C. § 44101 “a person may operate an aircraft only when the aircraft is
8 registered under section 44103 of this title.” Under 49 USCS § 44102, an aircraft is eligible for
9 registration in the United States by the FAA if:

10 (a) Eligibility.—An aircraft may be registered under section 44103 of this
11 title **only when** the aircraft is—

12 (1) **not registered under the laws of a foreign country** and is
13 owned by—

14 (A) a citizen of the United States;

15 (B) an individual citizen of a foreign country lawfully
16 admitted for permanent residence in the United States; or

17 (C) a corporation not a citizen of the United States when
18 the corporation is organized and doing business under the
19 laws of the United States or a State, and the aircraft is
20 based and primarily used in the United States

21 The aircraft fulfill none of the stated criteria for FAA registration.

22 The FAA registrations were invalid. The term “invalid” means under 14 C.F.R. §
23 47.43(b) that “the holder of the invalid Certificate of Aircraft Registration, AC Form 8050-3,
24 must return it as soon as possible to the Registry.” The returned Certificate of Aircraft
25 Registration will be cancelled by the FAA. 49 U.S.C. § § 44105. The basis for suspension or
26 revocation of a registration by the FAA is that the aircraft does meet the two standards of 49
27 U.S.C. § 44102 for registration. 49 U.S.C. § 44102 allows aircraft registration with the FAA of

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1 aircraft owned by (a) a United States citizen, (b) a permanent resident alien of the United States,
2 and (c) a non-citizen corporation organized and doing business under the laws of the United
3 States or a State based and primarily used in the United States. The Vanuatu corporations
4 owning the subject aircraft meet none of these standards.

5
6 The United States in its affidavits complains about the defendants and named persons'
7 failure to comply with FAA demands for reinspection and reexamination under 49 U.S.C. §
8 44709. The aircraft FAA registrations were invalid. 49 U.S. Code § 44102. To obtain an
9 airworthiness certificate, which permits an aircraft to fly legally, there must be a registered
10 owner and a registered aircraft. 14 CFR § 21.173. There are no validly issued FAA certificates
11 held by the defendants or the persons named in the affidavits to be re-inspected or reexamined.
12 There is no jurisdiction for such complaints and they cannot and do not form a basis for the
13 issuance of a search warrant.
14

15 ***Wrong Parties***

16
17 FAA records show that the subject aircraft are owned by Vanuatu corporations. The
18 United States submitted false statements about the roles played by Walker and Hansen
19 Helicopters. The United States alleges nothing to show that the defendants are liable for alleged
20 acts committed by the Vanuatu corporations. The Prozik and Bishop affidavits attempt to justify
21 the scope of the requested search warrants by repeatedly and falsely stating that every purported
22 wrong is related to Walker and Hansen Helicopters. Vanuatu companies own the helicopters, not
23 Walker or Hansen Helicopters.
24

25 The Supreme Court described the United States' ignored burden in seeking to nullify
26 corporate entities in *United States v. Bestfoods*, 524 U.S. 51, 61-62 (1998):
27

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1 It is a general principle of corporate law deeply "ingrained in our
2 economic and legal systems" that a parent corporation (so-called
3 because of control through ownership of another corporation's
4 stock) is not liable for the acts of its subsidiaries. "Neither does the
5 mere fact that there exists a parent-subsidary relationship between
6 two corporations make the one liable for the torts of its affiliate";
7 "Ordinarily, a corporation which chooses to facilitate the operation
8 of its business by employment of another corporation as a
9 subsidiary will not be penalized by a judicial determination of
10 liability for the legal obligations of the subsidiary"; "Limited
11 liability is the rule, not the exception"; "A corporation and its
12 stockholders are generally to be treated as separate entities". Thus
it is hornbook law that "the exercise of the `control' which stock
ownership gives to the stockholders . . . will not create liability
beyond the assets of the subsidiary. That `control' includes the
election of directors, the making of by-laws . . . and the doing of all
other acts incident to the legal status of stockholders. Nor will a
duplication of some or all of the directors or executive officers be
fatal."

13 (Citations to authorities omitted with quotations remaining.)

14 The teachings of the Ninth Circuit are clearly stated in *Ranza v. Nike*, 793 F.3d 1059.
15 1073 (9th Cir. 2015):

16 To satisfy the alter ego test, a plaintiff "must make out a prima
17 facie case **`(1) that there is such unity of interest and ownership
18 that the separate personalities [of the two entities] no longer
19 exist and (2) that failure to disregard [their separate identities]
20 would result in fraud or injustice.'**" *Unocal*, 248 F.3d at 926
(alterations in original) (quoting *AT & T Co. v. Compagnie
21 Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996)). The "unity
22 of interest and ownership" prong of this test requires "a showing
23 that the parent controls the subsidiary to such a degree as to render
24 the latter the mere instrumentality of the former." *Id.* (internal
25 quotation marks omitted). This test envisions pervasive control
26 over the subsidiary, such as when a parent corporation "dictates
every facet of the subsidiary's business-from broad policy
decisions to routine matters of day-to-day operation." *Id.* (internal
quotation marks omitted). Total ownership and shared
management personnel are alone insufficient to establish the
requisite level of control.

27
28 MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS EVIDENCE - 17

1 Emphasis added. Mere ownership of a company does not impose liability upon the owner of the
2 company. *See United States v. Bennett*, 621 F. 3d 1131, 1136 (9th Cir. 2010). The United States
3 has a heavy burden to prove to the Court that the corporate formalities of Hansen Helicopters and
4 the other corporations should be ignored. *United States v. Bestfoods*, *Ranza v. Nike*, *Doe v.*
5 *Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001).

7 According to FAA records, the named helicopters are owned by Vanuatu corporations.
8 Nothing shows that the United States has jurisdiction over claims made against the defendants
9 based on the helicopters owned by Vanuatu corporations. The United States asserts that the
10 defendants are associated with Hansen Helicopters. There is no connection between the
11 defendants and the Vanuatu corporations presented by the United States other than the bald
12 allegations that helicopter N9068F, shown by the FAA to be owned by Whirlwide Helicopter of
13 Vanuatu, Indictment p. 6, ¶ 23, aircraft owned by Hansen and Walker, Indictment, p. 6-7, ¶¶ 19-
14 20, p. 9, ¶¶ 40-41, and helicopter N243D, shown by the FAA to be owned by Evan Air, Inc.,
15 Indictment, p. 7, ¶ 30.

18 Submitted with the Motion is a description of the ownership of the Vanuatu corporations
19 which owned at the pertinent times the aircraft described in the United States' pleadings. The
20 described Vanuatu corporations were 100% owned by Beanbag Helicopters Services, Inc. of
21 Vanuatu. Beanbag Helicopters Services was 100% owned by Caledonian Insurance Company
22 Ltd, which was owned by Hansen Northern Inc. (149,999 shares) and Veritatem Nominees,
23 Limited (one share.) Hansen Northern, Inc. was owned by Walker (9,998 shares,) Crowe (one
24 share,) and Reed (one share.) Thus, to establish liability for Hansen Helicopters, the United
25 States must prove that Hansen Helicopters illegally used its non-ownership of the Vanuatu
26

1 corporations to commit the allegedly illegal acts, and must pierce the corporate identities of the
2 pertinent Vanuatu corporations, Beanbag Helicopters, Caledonian Insurance Company and
3 Hansen Northern. Not only are not facts alleged to accomplish the feats, the law does not
4 support such assertions.
5

6 Vanuatu Corporation Laws impose liability upon shareholders not on the basis that
7 ownership of shares but requires actions by the persons that create liability for the shareholder
8 personally. Vanuatu Companies Act No. 25 of 2012, § 46.

9 There is no basis for holding the defendants responsible for the allegedly illegal actions
10 of the Vanuatu corporations, particularly since any such activity much show actions on behalf of
11 Hansen Helicopters much relate back to companies in which Hansen Helicopters owned no
12 interest.
13

14 Nothing in the Prozik and Bishops affidavits provides anything other than bald faced
15 conclusions. The Fourth Amendment requires more than mere conclusions for the establishment
16 of probable cause.
17

18 *Americopters*

19 The issuance of a search warrant against Americopters shows the total lack of concern for
20 the facts of the case and the law demonstrated in the search warrant affidavits. Based on the
21 language in the affidavits, nothing was presented to the Court regarding Americopters, all
22 evidence, documents and property obtained from or resulting from evidence or documents seized
23 at the facilities of Americopters in Saipan must be suppressed. The affidavit submitted in
24 support of the Americopters' search warrant did not pretend to present a basis for a search
25 warrant directed at Americopters. Fed. R. Crim. P. 41(c).
26
27

28 MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS EVIDENCE - 19

1 ***General Warrants***

2 In this instance the execution of each of the search warrants violated the Fourth
3 Amendment to the United States Constitution. The government through the execution of three
4 virtually identical Search Warrants at three separate locations engaged in the unlimited search
5 and seizure which the Fourth Amendment forbids – a general warrant. See, *Marron v. United*
6 *States*, 275 U.S. 192, 48 S.Ct. 74, 72 L.Ed. 231 (1927).
7

8 The requirement that warrants shall particularly describe the things
9 to be seized makes general searches under them impossible and
10 prevents the seizure of one thing under a warrant describing another.

11 As to what is to be taken, nothing is left to the discretion of the
12 officer executing the warrant. *Marron v. United States*, 275 U.S. at
13 195.

14 That rule condemning general searches was re-affirmed in *Stanford v. State of Texas*, 379
15 U.S. 476, 85 S.Ct. 506, 13 L.Ed. 2d 431 (1965).

16 "The requirement that warrants shall particularly describe the things
17 to be seized makes general searches under them impossible and
18 prevents the seizure of one thing under a warrant describing another.
19 As to what is to be taken, nothing is left to the discretion of the officer
20 executing the warrant." *Marron v. United States*, 275 U.S. 192, at 196,
21 48 S.Ct. 74, at 76. We need not decide in the present case whether
22 the description of the things to be seized would have been too
23 generalized to pass constitutional muster, had the things been weapons,
24 narcotics or 'cases of whiskey.' See *Steele v. United States No. 1*,
25 267 U.S. 498, 504, 45 S.Ct. 414, 416, 69 L.Ed. 757.18 The point is
26 that it was not any contraband of that kind which was ordered to be
27 seized, but literary material—"books, records, pamphlets, cards,
28 receipts, lists, memoranda, pictures, recordings and other written
instruments concerning the Communist Party of Texas, and the
operations of the Communist Party in Texas.' The indiscriminate
sweep of that language is constitutionally intolerable. To hold
otherwise would be false to the terms of the Fourth Amendment,
false to its meaning, and false to its history. *Stanford v. State of Texas*,
379 U.S. at 485-86.

MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS EVIDENCE - 20

1 As evidenced by the "Attachment B" to the Search Warrant Affidavits, "property to be
2 seized" on each of the three affidavits for search warrant there is virtually no limitation on the
3 things that can be seized under any of the three warrants. The officers executing the search
4 warrants had unfettered discretion to take anything they wanted. All of the description of the
5 things to be seized begins with the catch all phrase "Any and all" and then gives a description
6 which covers any type of electronic, technological, paper, video, audio, storage devise of data on
7 the premises. The warrant authorizes the wholesale seizure of all electronic technical equipment
8 and data. The officers could conceivably seized anything on the premises based on the general
9 description, from a thumb drive to a fully functional helicopter. This type of unguided and
10 unfettered discretion in the execution of search warrant has been condemned by the Supreme
11 Court multiple times. See, *Maryland v. Garrison*, 480 U.S. 79, 107 S.Ct. 1013, 94 L.Ed. 2d 72
12 (1987).

13
14
15 The Warrant Clause of the Fourth Amendment categorically prohibits
16 the issuance of any warrant except one "particularly describing the
17 place to be searched and the persons or things to be seized." The
18 manifest purpose of this particularity requirement was to prevent
19 general searches. By limiting the authorization to search to the
20 specific areas and things for which there is probable cause to search,
21 the requirement ensures that the search will be carefully tailored to
22 its justifications, and will not take on the character of the wide-
23 ranging exploratory searches the Framers intended to prohibit.
24 Thus, the scope of a lawful search is "defined by the object of the
25 search and the places in which there is probable cause to believe
26 that it may be found. Just as probable cause to believe that a stolen
27 lawnmower may be found in a garage will not support a warrant to
28 search an upstairs bedroom, probable cause to believe that
undocumented aliens are being transported in a van will not justify
a warrantless search of a suitcase." *United States v. Ross*, 456 U.S.
798, 824, 102 S.Ct. 2157 2172, 72 L.Ed.2d 572 (1982).
Maryland v. Garrison, 480 U.S. at 84-85

MEMORANDUM IN SUPPORT OF
MOTION TO SUPPRESS EVIDENCE - 21

1 The three Search Warrants issued and executed in Guam, Saipan and Georgia were
2 general warrants and all evidence seized as a result thereof must be suppressed as a violation of
3 the Fourth Amendment to the United States Constitution.
4

5 **CONCLUSION**

6 Subject matter jurisdiction did not exist to issue the search warrants directed against
7 Walker and Hansen Helicopters. The search warrants were not legally issued. The execution of
8 the search warrants was a rummaging through property and general search warrants. All
9 evidence that comes from the execution of those search warrants, directly or indirectly, must be
10 suppressed.
11

12 Respectfully submitted,

13 MARTIN LAW OFFICE

14 /s/ Mack K. Martin

15 Mack K. Martin

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July, 2019, I provided a courtesy copy via U. S. mail and electronically transmitted the attached document to the clerk of the Court using the ECF System for filing and transmitting a Notice of Electronic Filing to the following ECF registrants: Mr. Stephen F. Leon-Guerrero, Assistant United States Attorney.

/s/ Edward A. McConwell

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